

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRANSFORMER SERVICES, INC.

Defendant.

Civil Action No.

CONSENT DECREE

I.	<u>JURISDICTION AND VENUE</u>	3
II.	<u>APPLICABILITY</u>	4
III.	<u>OBJECTIVES</u>	5
IV.	<u>DEFINITIONS</u>	6
V.	<u>COMPLIANCE, FINANCIAL ASSURANCE, AND REPORTING REQUIREMENTS</u>	7
VI.	<u>STIPULATED PENALTIES</u>	10
VII.	<u>FORCE MAJEURE</u>	13
VIII.	<u>DISPUTE RESOLUTION</u>	15
VIX.	<u>INFORMATION COLLECTION AND RETENTION</u>	17
X.	<u>EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS</u>	19
XI.	<u>COSTS</u>	20
XII.	<u>NOTICES</u>	21
XIII.	<u>EFFECTIVE DATE</u>	22
XIV.	<u>RETENTION OF JURISDICTION</u>	22
XV.	<u>MODIFICATION</u>	23
XVI.	<u>TERMINATION</u>	23
XVII.	<u>PUBLIC PARTICIPATION</u>	24
XVIII.	<u>SIGNATORIES/SERVICE</u>	24
XIX.	<u>INTEGRATION</u>	25
XX.	<u>FINAL JUDGMENT</u>	25
XXI.	<u>APPENDICES</u>	26

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with the lodging of this Consent Decree alleging that Defendant, Transformer Services, Inc. (“TSI”), violated the Polychlorinated Biphenyls (“PCBs”) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions (the “PCB Regulations”), promulgated pursuant to Section 6(e) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2605(e).

The Complaint against Defendant, filed pursuant to the authority in Sections 15 and 16(a) of TSCA, 15 U.S.C. §§ 2614 and 2615(a), alleges that Defendant failed to dispose of PCB waste within one year of the date the waste was placed in storage for disposal, in violation of TSCA and 40 C.F.R. § 761.65(a).

The Parties recognize, and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in **Section I**, below, and with the consent of the Parties, it is **HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 17(a) of TSCA, 15 U.S.C. § 2616(a). Venue lies in this District pursuant to Section 17(a) of TSCA, 15 U.S.C. § 2616(a); 28 U.S.C. §§ 1391(b) and (c); and 28 U.S.C. § 1395(a) because the Defendant

is found and transacts business in this judicial district. For purposes of this Consent Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 17 of TSCA, 15 U.S.C. § 2616(a).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant, its agents, successors, and assigns.

4. Any transfer of ownership or operation of the Transformer Services, Inc. facility ("Facility") to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by paragraphs 10 through 18 of this Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 1 and the United States Department of Justice, in accordance with **Section XII** of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of the Facility, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the

Decree are implemented.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree.

Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

7. It is the express purpose of the parties in entering into this Consent Decree to:
 - i. further the goals of TSCA, as enunciated in Section 2 of TSCA, 15 U.S.C. § 2601;
 - ii. have Defendant take all the measures necessary to comply with TSCA and the PCB regulations; and
 - iii. ensure the availability of adequate funds to close the Facility in an environmentally sound manner should Defendant ever shut down the Facility or go out of business.

IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in TSCA or in regulations

promulgated pursuant to TSCA shall have the meanings assigned to them in TSCA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Complaint" shall mean the complaint filed by the United States in this action;
- b. "Consent Decree" or "Decree" shall mean this Decree and the appendices attached hereto (listed in **Section XXI**);
- c. "Consent Agreement and Order" or "CAO" shall mean the administrative settlement agreement between EPA and Defendant, which was signed by the Regional Judicial Officer on January 30, 2001. The CAO is entitled, "Consent Agreement and Order for Proper PCB Storage, Recordkeeping, and Reporting."
- d. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;
- e. "Defendant" shall mean Transformer Services, Inc ("TSI");
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;
- g. "Facility" shall mean Defendant's facility, located on 74 Regional Drive in Concord, New Hampshire;
- h. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;
- i. "PPM" shall mean parts per million;
- j. "Parties" shall mean the United States and Defendant;

- k.. “Section” shall mean a portion of this Decree identified by a roman numeral;
- l. “State” shall mean the State of New Hampshire;
- m. “United States” shall mean the United States of America, acting on behalf of EPA.

V. COMPLIANCE, FINANCIAL ASSURANCE AND REPORTING REQUIREMENTS

- 9. Defendant certifies that it is in compliance with 40 C.F.R. § 761.65(a)(1), which requires that PCB waste be disposed of within one year of the date the waste was placed in storage for disposal.
- 10. For PCB waste that Defendant receives within 270 days of the out-of-service date (“OSD”), Defendant shall dispose of such waste within one year of the OSD. For PCB waste that Defendant receives 270 days or beyond of the OSD, Defendant shall dispose of such waste within 90 days of the date that Defendant receives the waste.
- 11. Defendant shall comply with all the PCB Regulations, promulgated at 40 C.F.R. Part 761, with respect to the Facility.
- 12. Defendant shall continue to comply with the terms of the January 30, 2001 Consent Agreement and Order (“CAO”), except that, beginning on the effective date of this Consent Decree, Defendant shall fund the “Trust Agreement” referenced in **Section II.2.B** of the CAO at \$1500 per month (an increase from the current \$700 per month until it is fully funded at the amount needed for closure). The CAO, attached hereto as Appendix A, is hereby incorporated by reference into this Consent Decree.
- 13. To further ensure compliance with 40 C.F.R. § 761.65(a)(1) (requirement to dispose

of PCB waste within one year of placing such waste into storage for disposal), Defendant shall submit to EPA a monthly report from its computer waste inventory tracking system.

- a. Each report shall contain the information required in **Section II.2.A** of the CAO (see Appendix A). Appendix B contains an example of an acceptable report.
- b. Defendant shall submit its report by the twentieth day of every month to EPA at the address specified in **Section XII** of this Consent Decree (Notices).

14. Each report submitted by Defendant shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this documents and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

15. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by TSCA or implementing regulations, or by any other federal, state, or local law, regulation, permit or other requirement.

16. For the retention ditch cleanup identified in Defendant's February 26, 2001 and April 7, 2005, letters to EPA (attached as Appendix C and D, respectively), TSI shall, by September

30, 2007, conduct the following activities in conformance with the provisions and standards set forth in 40 C.F.R. § 761.61(b) and, for sampling requirements, 40 C.F.R., Part 761, Subpart O.

- a. For areas where data has shown PCBs to be less than 1 ppm, the area must be resampled and analyzed in accordance with EPA Method 8082.
- b. Defendant shall remove and dispose of soil and concrete contaminated with PCBs at concentrations of 1 ppm or greater in accordance with 40 C.F.R. § 761.61(b).
- c. After removing PCB-contaminated soil and concrete, Defendant shall perform confirmatory sampling. The samples must be analyzed in accordance with EPA Method 8082.
- d. Defendant shall submit a report to EPA confirming completion of the retention ditch cleanup.

17. If Defendant violates any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration in writing within ten working days of the day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the requisite notice for purposes of **Section VII** (Force Majeure).

18. In the case of any violation or other event that may pose an immediate threat to the public health, welfare, or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

19. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VI. STIPULATED PENALTIES

20. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under **Section VII** (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree according to all applicable requirements of this Consent Decree and within the specified time schedules established by this Decree. The stipulated penalty provisions of this Consent Decree supersede the stipulated penalty provisions contained in **Paragraphs II.2.N-O** of the CAO.

21. The following stipulated penalties shall accrue per violation per day for each violation of the requirements of:

- a. **Paragraph II.2A** of the CAO (use of a computer waste inventory tracking system (“CWITS”) to track waste stored at the Facility);
- b. **Paragraph 13** above (submittal of a monthly report to EPA from the CWITS);
- c. **Paragraph II.2.B** of the CAO as modified by **Paragraph 12**, above (funding of the Trust Agreement for closure and post closure care of the Facility);
- d. **Paragraph II.2.F** of the CAO (limitations on drum stacking);
- e. **Paragraph II.2.H** of the CAO (ensuring that Defendant stores no more than the maximum allowable quantity of PCB waste);

- f. **Paragraph II.2.J** of the CAO (storage of PCB wastes in designated areas only);
- g. **Paragraph 10**, above (timely disposal of PCB waste from OSD); and
- h. **Paragraph 16**, above (remediation of retention ditch area)

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$100	1 ST through 14 th day
\$200	15 th day and beyond

22. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

23. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties due it under this Consent Decree.

24. Stipulated Penalties shall continue to accrue as provided in **Paragraph 22**, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;
- b. If the dispute is appealed to the Court, and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be

owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in **Subparagraph c**, below:

- c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

25. Defendant shall pay Stipulated Penalties for violations occurring between the date of lodging and the Effective Date of this Consent Decree within 30 days of the Effective Date of this Consent Decree.

26. Payment of Stipulated Penalties owed to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Region 1, and DOJ Case Number 90-5-1-1-08721. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the District of New Hampshire following entry of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Defendant shall send notice to EPA and DOJ that payment has been made in accordance with **Section XII** (NOTICES).

27. Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

28. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

29. Subject to the provisions of **Section X** of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

VII. FORCE MAJEURE

30. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The term "best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

31. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in **Section XII** of this Consent Decree (Notices), within seven days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude Defendant from asserting any claim of force majeure.

32. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to **Section XV** of this Consent Decree (Modification).

33. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under **Section VIII** of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by **Paragraph 31**; that the force majeure event caused any delay Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

VIII. DISPUTE RESOLUTION

34. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

35. Informal Dispute Resolution. Any dispute subject to dispute resolution under this

Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

36. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

37. The United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

38. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with **Section XII** of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of

receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

39. The United States shall respond to Defendant's motion within the time period provided in the Local Rules of this Court, unless the parties stipulate otherwise. Defendant may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

40. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and TSCA and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

41. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, not directly in dispute. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute, as provided in **Paragraph 24**, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in **Section VI** (Stipulated Penalties).

VIX. INFORMATION COLLECTION AND RETENTION

42. The United States and its representatives shall have the right of entry to the Facility at all reasonable times, upon presentation of credentials to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representative, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

43. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

44. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under

this Paragraph.

45. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, Defendant shall deliver any such records or documents to EPA. Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

46. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, including the right to inspect and seek information pursuant to Section 11 of TSCA, 15 U.S.C. § 2610.

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

47. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

48. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under TSCA, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

49. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of TSCA.

50. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

51. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

52. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health, welfare, or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

XI. COSTS

53. Each party shall bear its own costs of this action, including attorneys fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law. However, the United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the Stipulated Penalties due but not paid by Defendant.

XII. NOTICES

54. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08721

and

To EPA:

Marianne Milette
U.S. Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100
Mail code SEP
Boston, MA 02114
Telephone: (617) 918-1854

and

Steven Schlang, Esq.
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100
Mail code SEL
Boston, MA 02114
Telephone: (617) 918-1773
Fax: (617) 918-0773

To Defendant:

Steven Booth
President
Transformer Services, Inc.
74 Regional Drive
Concord, NH 03302

55. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

56. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIII. EFFECTIVE DATE

57. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XIV. RETENTION OF JURISDICTION

58. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to **Sections VIII and XV**, or effectuating or enforcing compliance with the terms of this Decree.

XV. MODIFICATION

59. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. After two years of continuous compliance, the frequency with which the reports must be submitted pursuant to **Section II.2.B** of the CAO and **Paragraph 13** above may be modified upon written agreement of the Parties without Court approval.

XVI. TERMINATION

60. After Defendant has maintained continuous satisfactory compliance with the requirements of TSCA and this Consent Decree for a period of five years after the Effective Date of this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

61. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may

have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

62. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under **Section X** of this Decree. However, Defendant shall not seek Dispute Resolution for any dispute pursuant to **Section X** until sixty (60) days after service of its Request for Termination.

XVII. PUBLIC PARTICIPATION

63. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XVIII. SIGNATORIES/SERVICE

64. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

65. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

66. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

67. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XIX. INTEGRATION

68. This Consent Decree and its **Appendices** constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written. Other than the **Appendices**, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XX. FINAL JUDGMENT

69. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Defendant. The Court finds that

there is no just reason for delay and therefore enters this judgment as a final judgment under Fed.
R. Civ. P. 54 and 58.

XXI. APPENDICES

70. The following appendices are attached to and incorporated into this Consent Decree:

- a. "Appendix A" is the Consent Agreement and Order for Proper PCB Storage, Recordkeeping and Reporting, dated January 30, 2001;
- b. "Appendix B" is an example of an acceptable CWITS report.
- c. "Appendix C" is the February 26, 2001 Retention Basin Cleanup Plan.
- d. "Appendix D" is the April 7, 2005 Update to the Retention Ditch Cleanup.

Dated and entered this ____ day of _____, 2007.

UNITED STATES DISTRICT JUDGE
District of New Hampshire

United States v. Transformer Services, Inc.
United States District Court, District of New Hampshire
Consent Decree

The following parties hereby consent to the entry of this Consent Decree:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

8/31/07
Dated

PETER M. FLYNN
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Sta.
Washington, DC 20044-7611
(202) 514-4352

9/18/07
Dated

United States v. Transformer Services, Inc.
United States District Court, District of New Hampshire
Consent Decree

THOMAS P. COLANTUONO
United States Attorney
District of New Hampshire

GRETCHEN LEAH WITT
Assistant United States Attorney
District of New Hampshire
55 Pleasant Street
Concord, NH 03301-3904
(603) 225-1552

United States v. Transformer Services, Inc.
United States District Court, District of New Hampshire
Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

United States v. Transformer Services, Inc.
United States District Court, District of New Hampshire
Consent Decree

SUSAN STUDLIEN
Director, Office of Environmental Stewardship
United States Environmental Protection Agency
Region I
1 Congress Street, Suite 1100
Boston, MA 02114

9-7-07
Dated

STEVEN SCHLANG
Senior Enforcement Counsel
United States Environmental Protection Agency
Region 1
1 Congress Street
Boston, MA 02114

9/4/07
Dated

United States v. Transformer Services, Inc.
United States District Court, District of New Hampshire
Consent Decree

FOR DEFENDANT, Transformer Services, Inc.:


STEPHEN BOOTH


President

Transformer Services Inc.

74 Regional Drive

Concord, New Hampshire

Aug. 10, 2007
Dated


TRACY LaCHANCE

Rath, Young and Pignatelli, P.C.

One Capitol Plaza

P.O. Box 1500

Concord, NH 03302

8/15/07